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2 **IN THE UNITED STATES DISTRICT COURT FOR THE**
3 **WESTERN DISTRICT OF MISSOURI**
 SOUTHWESTERN DIVISION

4 **UNITED STATES OF AMERICA,**) **Case No. 17-05023-01-CR-SW-RK**
)
5 **Plaintiff,**) **Springfield, Missouri**
) **January 29, 2018**
6 **v.**)
)
7 **RAYMOND ADAIR,**)
)
8 **Defendant.**)
)
_____)

9
10 **TRANSCRIPT OF HEARING ON CHANGE OF PLEA**
11 **BEFORE THE HONORABLE DAVID P. RUSH**
 UNITED STATES MAGISTRATE JUDGE

12 **APPEARANCES:**

13 For the Plaintiff: Mr. James J. Kelleher
 Assistant United States Attorney
14 901 St. Louis St., Ste. 500
 Springfield, MO 65806
 (417) 831-4406

15 For the Defendant: Ms. Erica Mynarich
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1 (Court in Session at 1:35 p.m.)

2 THE COURT: Calling in *United States vs. Raymond Adair*.

3 The defendant appears in person along with his attorney, Ms.
4 Erica Mynarich. The United States appears by Assistant United
5 States Attorney, Mr. Jim Kelleher. This matter is set this
6 afternoon for a change of plea to the two-count Information which
7 was filed back on May 25th, 2017, pursuant to a written Plea
8 Agreement. Mr. Adair, you have signed a consent to have these
9 proceedings for a plea of guilty before a Magistrate Judge, with
10 the understanding that a United States District Judge, a judge of
11 higher jurisdiction, will keep your case for acceptance of the
12 plea of guilty and sentencing. Even though you signed this
13 consent you have a right, if you wish, to appear before a United
14 States District Judge, a judge of higher jurisdiction, for these
15 proceedings. At any appearance before the District Judge, you're
16 presumed innocent until such time, if ever, as the Government
17 establishes your guilt beyond a reasonable doubt to the
18 satisfaction of the judge or jury. You always have a right to be
19 present and to confront and cross-examine witnesses. You have a
20 right to use the power of the court to subpoena evidence on your
21 behalf and you have a right to testify or not testify as you
22 would choose. And if you chose not to testify it would not be
23 held against you as that is your right. If, after understanding
24 the charges against you, the range of punishment, if convicted,
25 and your right to appear before a District Judge, if you wish,

1 you may waive or give up that right and proceed this afternoon
2 before the Magistrate Judge. As I indicated, you and your
3 attorney have signed such a consent. Do you understand that you
4 have a right to appear before a United States District Judge, a
5 judge of higher jurisdiction, for these proceedings?

6 MR. ADAIR: I do understand, Your Honor.

7 THE COURT: And is it your desire to give up that right
8 and proceed this afternoon before the Magistrate Judge?

9 MR. ADAIR: Yes, it is, Your Honor.

10 THE COURT: Mr. Adair, do you understand the charge
11 against you in Count One of the Information that's been filed in
12 this case?

13 MR. ADAIR: I do.

14 THE COURT: Do you understand that if convicted of the
15 charge in Count One, that the maximum penalty the court may
16 impose is not more than 60 years imprisonment, not more than a
17 \$250,000 fine, not less than five years supervised release or up
18 to a life term of supervised release, and a \$100 mandatory
19 special assessment?

20 MR. ADAIR: I do understand that, Your Honor.

21 THE COURT: To the charge in Count One, how do you wish
22 to plead, guilty or not guilty?

23 MR. ADAIR: Guilty.

24 THE COURT: Do you understand the charge against you in
25 Count Two of the Information that's been filed in this case?

1 MR. ADAIR: Yes, I do, Your Honor.

2 THE COURT: Do you understand that if convicted of the
3 charge in Count Two, that the maximum penalty the court may
4 impose is not more than 10 years imprisonment, not more than a
5 \$250,000 fine, not more than five years supervised release, and a
6 \$100 mandatory special assessment?

7 MR. ADAIR: I do, Your Honor.

8 THE COURT: To the charge in Count Two, how do you wish
9 to plead, guilty or not guilty?

10 MR. ADAIR: Guilty, Your Honor.

11 THE COURT: Would you please raise your right hand as
12 best you can?

13 RAYMOND ADAIR, DEFENDANT, SWORN

14 THE COURT: Has anyone made any threat of any kind to
15 force you to plead guilty or give up any of the other rights
16 we've discussed this afternoon?

17 MR. ADAIR: No, Your Honor.

18 THE COURT: You've signed a Plea Agreement. Have you
19 read the Plea Agreement and gone over it with your attorney?

20 MR. ADAIR: Yes, I have.

21 THE COURT: Do you understand what's in it?

22 MR. ADAIR: Yes, Your Honor.

23 THE COURT: Other than what is contained in the Plea
24 Agreement, has anyone made any promise of any kind to induce you
25 or overcome your will to get you to plead guilty or give up any

1 of the other rights we've discussed?

2 MR. ADAIR: No, Your Honor.

3 THE COURT: Now, I mentioned to you that there was a
4 supervised release term of not less than five years or up to life
5 supervised release that could be imposed in your case as to Count
6 One and not more than a five-year term of supervised release that
7 could be imposed in your case as to Count Two. Do you understand
8 that if those terms were imposed and then revoked for any reason,
9 that you could be required to serve an additional term of
10 imprisonment of not more than three years as to Count One and not
11 more than two years as to Count Two. As to Count One, unless --
12 and this is as to Count One only -- unless the provisions of 18
13 U.S.C. Section 3583(k) supersede Section 3583(e)(3), in that case
14 the court must impose a sentence of not less than five years, and
15 under those scenarios that I've just described for you, if that
16 happened you would receive no credit for any other time you had
17 spent either in custody or on release? Do you understand that?

18 MR. ADAIR: I do, Your Honor.

19 THE COURT: Do you understand that the District Court as
20 to both Count One and Count Two could impose an additional term
21 of supervised release, which is governed by the maximum of the
22 statute pertaining to each count, minus any time you'd spent in
23 custody as a result of a violation?

24 MR. ADAIR: I do, Your Honor.

25 THE COURT: Do you understand that from a sentence

1 imposed in your case that there is no parole?

2 MR. ADAIR: Yes, I do.

3 THE COURT: Do you understand that there are Sentencing
4 Guidelines to which the District Court or the sentencing judge
5 would refer to in an advisory capacity when attempting to fashion
6 a reasonable sentence in your case?

7 MR. ADAIR: Yes, Your Honor.

8 THE COURT: There are guideline calculations in your
9 Plea Agreement. Have you discussed the guidelines with your
10 attorney?

11 MR. ADAIR: Yes, I have.

12 THE COURT: And do you understand them?

13 MR. ADAIR: I believe so, Your Honor.

14 THE COURT: Do you understand that the final decision as
15 to how the guidelines are calculated and ultimately what sentence
16 will be imposed rests with the District Judge?

17 MR. ADAIR: Yes, I do, Your Honor.

18 THE COURT: If the District Judge would calculate the
19 guidelines differently from what is in your Plea Agreement, and
20 from what you've discussed with Ms. Mynarich, that fact would not
21 give you the right to withdraw or change your plea of guilty. Do
22 you understand that?

23 MR. ADAIR: I do.

24 THE COURT: Once the District Judge establishes the
25 advisory guideline range, in some circumstances, you could be

1 sentenced above that range and, in other circumstances, you could
2 be sentenced below that range. And again, the judge's decision,
3 if you disagreed, would not give you the right to withdraw your
4 plea of guilty. Do you understand that?

5 MR. ADAIR: I do understand, Your Honor.

6 THE COURT: Now, Mr. Adair, you have a right to a trial
7 by jury with all the protections that I explained to you at the
8 beginning of these proceedings. Do you understand your right to
9 a trial by jury?

10 MR. ADAIR: I do, Your Honor.

11 THE COURT: And do you understand that if the court
12 accepts your pleas of guilty that there won't be a trial?

13 MR. ADAIR: I do understand that.

14 THE COURT: I'm going to ask you about the offenses
15 charged in Counts One and Two of the Information. I would remind
16 you that you are under oath. You must answer truthfully. Any
17 false answers could result in charges of false swearing or
18 perjury. You always have the right to remain silent. And I want
19 to refer you to your plea bargain agreement, specifically on page
20 2, Paragraph 3 or Section 3, which is entitled in bold **Factual**
21 **Basis for Guilty Plea**. That then takes up the remainder of page
22 2, entirety of page 3 and onto a brief portion of page 4. Have
23 you read Section 3 and gone over it with Ms. Mynarich?

24 MR. ADAIR: Yes, I have, Your Honor.

25 THE COURT: Are the statements contained in Section 3

1 true?

2 MR. ADAIR: They are, Your Honor.

3 THE COURT: Ms. Mynarich, you've had access to the
4 Government's discovery file in this case, have you not?

5 MS. MYNARICH: Yes, Your Honor.

6 THE COURT: And based upon your review of the discovery
7 file, are you satisfied if put to proof, that the United States
8 could make a submissible case as to all the elements pertaining
9 to Counts One and Two of the Information as set forth in
10 Paragraph 3 of the Plea Agreement?

11 MS. MYNARICH: Yes, Your Honor.

12 THE COURT: There is an adequate factual basis for the
13 pleas of guilty to Counts One and Two. I find that the plea is
14 voluntary and did not result from force, threats or promises
15 other than those set forth in the Plea Agreement. Mr. Adair, you
16 are represented in this case by Ms. Mynarich. Have you had
17 enough time to talk with her about your case?

18 MR. ADAIR: Yes, I have, Your Honor.

19 THE COURT: Are you satisfied with the advice that she's
20 given you?

21 MR. ADAIR: Yes, Your Honor.

22 THE COURT: The law requires me to ask you if this
23 afternoon you are on any medication prescribed by a physician or
24 any drugs or alcohol of any kind which would affect your ability
25 to understand these proceedings?

1 MR. ADAIR: No, Your Honor.

2 THE COURT: The plea bargain agreement that you've
3 signed also contains what we refer to as an appeal waiver. And I
4 want to refer you again back to your plea bargain agreement, this
5 time on page 11, Paragraph 15 which is entitled in bold **Waiver of**
6 **Appellate and Post-Conviction Rights**. Have you read Paragraph 15
7 and gone over it with Ms. Mynarich?

8 MR. ADAIR: Yes, Your Honor.

9 THE COURT: And do you understand that by signing this
10 Plea Agreement that you've given up those rights to appeal as set
11 forth in Paragraph 15?

12 MR. ADAIR: I do understand that.

13 THE COURT: Understanding that and the other matters
14 that we've discussed this afternoon, is it your desire for the
15 court to accept these pleas of guilty?

16 MR. ADAIR: Yes, Your Honor.

17 THE COURT: Mr. Kelleher, on behalf of the United
18 States, do you have any other record under Rule 11 that you think
19 I need to make?

20 MR. KELLEHER: No, Your Honor. Thank you.

21 THE COURT: Ms. Mynarich, on behalf of the defendant, do
22 you have any other record under Rule 11 that you think I need to
23 make?

24 MS. MYNARICH: No, Your Honor.

25 THE COURT: I will recommend the pleas of guilty be

1 accepted and I will order a Presentence Investigation to be
2 conducted by the Probation Office. With that, we'll be in
3 recess. Thank you.

4 (Court Adjourned at 1:45 p.m.)
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4 I certify that the foregoing is a correct transcript
5 from the electronic sound recording of the proceeding in the
6 above-entitled matter.

7
8 /s/ Lissa C. Whittaker
Signature of transcriber

February 4, 2018
Date